

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 19 May 2021

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-92618-J4C5, for a decision whether a request for information made by the complainant to the Home Office on 14 December 2020, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 14 December 2020, the complainant made the following request for information under the FOIA:

"... [The complainant] considers that its previous requests were refused on an incorrect basis. In any event, [The complainant] has carefully considered the reasons given for the previous refusal of its requests, and determined which information is critical to its work that should be disclosable under FOIA despite the concerns raised in the responses received to date. It therefore makes a targeted request under FOIA of the following essential information:

a. The annual figure for the number of individuals who have been deprived of their British nationality pursuant to section 40(2) BNA during the year 2019 (the figures released previously in HM Government Transparency Reports):

b. The figure to date for 2020;

c. For each of the above figures, how many of the individuals were women; and

d. For each of the above figures, how many of the individuals are the parents of minor children; and

e. If parents of minor children, how many minor children did they have at the time of deprivation.

Please provide a response to each limb of the request, as broken down above".

3. On 15 February 2021, the Home Office responded and refused to provide the requested information citing the following sections of the FOIA: 22 (Information intended for future publication) and 36(2)(c) (Prejudice to effective conduct of public affairs).
4. On 8 March 2021, the complainant wrote to the Commissioner to complain about the response, asking her to expedite an investigation.
5. No internal review has been requested or undertaken in this case. However, exceptionally, the Commissioner agreed to commence an investigation without one.
6. On 29 March 2021, the Commissioner wrote to the Home Office raising various queries to assist with her investigation. At the time of writing

this notice, she has liaised with the Home Office and agreed to three time extensions; no substantive response has been received.

Information required

7. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the Home Office shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
8. The Home Office is required to respond to the email which the Commissioner sent to it on 29 March 2021 namely:

" ... I need the following information from you to reach a decision.

A copy of the withheld information (clearly marked to show where each FOIA exemption applies).

Please answer the following questions in relation to the exemptions cited.

Section 22 - information intended for future publication

Please confirm which parts of the request this exemption relates to.

In order correctly rely on section 22 there must have been a settled intention to publish the requested information prior to the request being received. Therefore, please provide evidence which demonstrates that the information was going to be published at the time of the initial request. Was the publication date determined when the request was actually received? If so, please confirm on date publication will take place.

Furthermore, for this exemption to be relied on section 22(1)(c) requires that the application is 'reasonable in all the circumstances' of the request. Therefore, please explain why in this case the Home Office concluded that the application of the exemption was a reasonable one.

Please provide any further public interest arguments which you would like to rely on.

Section 36 - prejudice to effective conduct of public affairs

The Home office has advised that it is relying on section 36(2)(c) – i.e. 'otherwise prejudice effective conduct of public affairs' – by virtue of section 36(4). Please clarify what the nature of this prejudice is.

Please clarify the level of prejudice being relied on, i.e. that disclosure 'would' or 'would be likely to' otherwise prejudice the effective conduct of public affairs

Please provide any further public interest arguments which you would like to rely on".

9. Furthermore, it is understood that the Home Office may wish to rely on additional exemptions. If it wishes to do so it must provide a response to the relevant questions for any exemption it wishes to rely on; the 'template' questions which the Commissioner uses for her investigations were provided to the Home Office on 6 May 2021.
10. If the Home Office does rely on further exemptions it must write to the complainant to advise her of this and provide its rationale for her to consider.

Failure to comply

11. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

12. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@Justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF